



Signed and Filed: January 30, 2020

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:) Bankruptcy Case
PG&E CORPORATION,) No. 19-30088-DM
- and -) Chapter 11
PACIFIC GAS AND ELECTRIC COMPANY,) Jointly Administered
Debtors.)
Date: October 7, 2019
☐ Affects PG&E Corporation) Time: 10:00 AM
☐ Affects Pacific Gas and) Place: Courtroom 17
Electric Company) 450 Golden Gate Ave.
☒ Affects both Debtors) 16th Floor
San Francisco, CA
* All papers shall be filed in)
the Lead Case, No. 19-30088 (DM).)

**SECOND AMENDED¹ ORDER GRANTING FEE EXAMINER'S
MOTION TO APPROVE FEE PROCEDURES**

On May 28, 2019, this court entered an order appointing
Bruce A. Markell as the Fee Examiner in these chapter 11 cases.
In accordance with that order, the Fee Examiner filed a Notice

¹ This order revises paragraph 2(b) of the Amended Order Granting Fee
Examiner's Motion to Approve Fee Procedures [dkt. 5168] entered on December
18, 2019. The revisions are noted in bold.

1 of Terms of Protocol Regarding Submission of Fee Applications on
2 August 30, 2019 ("Protocol") (dkt. 3762). On September 19,
3 2019, the Fee Examiner filed the underlying Motion to Approve
4 Fee Procedures ("Fee Procedures Motion") (dkt. 3950) seeking
5 court approval of procedures set forth in the Protocol. Nine
6 law firms filed a joint response (dkt. 4064) and Milbank LLP
7 (dkt. 4050) filed a separate response opposing several material
8 terms of the Protocol and the Fee Procedures Motion. The United
9 States Trustee ("UST") filed a response (dkt. 4025) largely
10 supporting the Fee Procedures Motion, which The Utility Reform
11 Network (dkt. 4475) joined.

12 After issuing a tentative ruling on October 6, 2019, the
13 court held a hearing on the Fee Procedures Motion in support of
14 the Fee Examiner's motion to approve fee procedures (dkt. 3950)
15 the following day. The court encouraged the Fee Examiner and
16 those parties responding to the Protocol and Fee Procedures
17 Motion to meet and confer to attempt to resolve their disputes
18 as to the terms of proposed Protocol.

19 On October 24, 2019, the Fee Examiner filed a reply (dkt.
20 4475) indicating that the parties had negotiated the terms of a
21 revised protocol, thereby addressing all issues except the
22 ability of professionals to bill for non-working travel. On the
23 same date, Debtors filed a copy of the Revised Protocol and a
24 red-lined version of the Revised Protocol (dkt. 4473). Section
25 5.1.8 (Travel Billing) provides two alternates:

26 Alternate Provision 1: Non-working travel time is
27 compensable at 50% of the Biller's standard hourly rate.
28

1 Alternate Provision 2: Non-working travel time is
2 compensable as provided in the existing Local Guidelines
3 and Court Guidelines.

(dkt. 4473-1 at ECF pg. 10).

4 The court's position on nonworking travel time has been
5 published and in place for over eighteen years. Consistency and
6 predictability are important and will not be disturbed absent
7 good reason. All employed professionals took on their
8 assignments in these cases with knowledge or at least notice of
9 the court's requirements in this area. None sought relief at
10 the outset of their employment. Those who chose to adopt a 50%
11 non-working travel time protocol did so at their own risk.
12 "Better to ask forgiveness than permission" will not carry the
13 day. The Court will not deviate from its existing Practices &
14 Procedures, and will allow only two hours to be billed for non-
15 working airplane travel time. See *PRACTICES AND PROCEDURES IN*
16 *JUDGE MONTALI'S COURT* (July 2018) at III(I), page 12 (available
17 at [http://www.canb.uscourts.gov/procedure/montali/judge-](http://www.canb.uscourts.gov/procedure/montali/judge-montalis-practices-and-procedures)
18 [montalis-practices-and-procedures](http://www.canb.uscourts.gov/procedure/montali/judge-montalis-practices-and-procedures)).

19 In light of the foregoing, and good cause appearing
20 therefor, it is hereby ORDERED that:

- 21 1. The Fee Examiner's Motion to set Fee Procedures is
22 granted as provided herein.
- 23 2. As to any currently pending interim fee application
24 (defined as any interim fee application filed before
25 November 15, 2019):
 - 26 a. Only the Fee Examiner shall have authority to set
27 a hearing date, and such dates shall be set under
28 the provisions of Paragraph 9 of the Order

Appointing Fee Examiner, i.e., after a final report, in coordination with Debtors' counsel, and grouped to advance judicial economy.

- b. If a fee applicant and the Fee Examiner have reached a compromise, a hearing should be set on the same basis and be coordinated with other fee hearings, so that hearings are grouped to advance judicial economy. Any hearing on a fee application exceeding \$1,000 shall be heard on 21 days notice as required by Fed. R. Bankr. Pro. 2002(a)(6) and the notice of hearing shall comply with Fed. R. Bankr. Pro. 2002(c)(2).

Additionally, the notice should set forth the deadline for objections and identify **(1) each applicant and the party represented by that applicant, (2) the date range for the services for which the compensation is being sought; and (3) the amount of fees applied for, the amount of expenses requested**, the amount of any compromise with the Fee Examiner, and the net amount claimed. The notice should also state that all professionals may appear via CourtCall.

3. As to future cycles of interim fee applications, the following procedures shall be implemented;

- a. Interim fee applications shall be considered every four months, as provided for in the Order [Establishing] Procedures for Interim Compensation and Reimbursement of Expenses of

1 Professionals entered on February 28, 2019 (dkt.
2 701). The next deadline to file an interim fee
3 application shall be March 15, 2020, and future
4 interim applications may be filed at four-month
5 intervals. If an interim fee application is
6 filed after the deadline, it will be deemed filed
7 at the next interval. Each application will
8 cover fees and expenses incurred through the end
9 of the second full month preceding the deadline.

10 b. In the discretion of the Fee Examiner, the
11 hearing dates on the interim applications will be
12 grouped into three blocks as follows:

13 i. The "core" debtors' counsel and committee
14 counsel (Keller Benvenutti, Weil Gotshal,
15 Cravath, Milbank, and Baker Hostetler);

16 ii. Debtors' other legal counsel subject to fee
17 examination; and

18 iii. Non-legal professionals.

19 4. The Fee Examiner will determine when each block is set
20 for hearing, attempting to do so in a manner
21 respecting judicial economy and the efficient use of
22 Fee Applicants' time. The Fee Examiner may set each
23 block on a different day. The goal is to group
24 applications such that duplication of effort can be
25 more easily detected (if it exists), and to also
26 spread out the work of the Fee Examiner and his
27 limited staff.
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1 5. Any Revised Protocol agreed to by the parties should
2 provide "Non-working travel time is compensable as
3 provided in the existing Local Rules and Court
4 Guidelines."

5 ****END OF ORDER****
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